

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DAVID ANTHONY COOMBS,)	
)	
Plaintiff)	
)	
vs.)	No. CIV-06-1143-C
)	
UNITED STATES OF AMERICA,)	
)	
Defendant)	

ORDER OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, a federal detainee appearing pro se, has brought this action for damages under the Federal Tort Claims Act. The matter was referred to United States Magistrate Judge Doyle W. Argo, consistent with 28 U.S.C. § 636(b)(1)(B). Judge Argo entered a Report and Recommendation on December 26, 2006, recommending that the Plaintiff's action be dismissed for failure to state a claim upon which relief can be granted, specifically for failure to exhaust administrative remedies.

On January 9, 2007, within the time specified for objections to the Report and Recommendation, the United States Court Clerk received a letter from Plaintiff, stating it is "in reply to the Report and Recommendation" entered earlier. The letter states that Plaintiff opposes the recommendation, but requests an opportunity to file a new suit, appearing to allege that the administrative exhaustion is now complete. It is difficult to determine Plaintiff's request – on the one hand he states he opposes the Report and Recommendation,

but on the other requests leave to file a new lawsuit. However, because Plaintiff takes no issue with either the factual or legal determinations set out in the Report and Recommendation, the Court concludes that no objection has been voiced; rather, the letter will be treated as merely a statement of Plaintiff's intention to file a new lawsuit, leave for which is not necessary when the recommended dismissal is without prejudice.

Accordingly, the Court adopts the Report and Recommendation, in its entirety, and for the reasons stated therein, this action is dismissed, without prejudice, for failure to allege exhaustion of administrative remedies.

IT IS SO ORDERED this 19th day of January, 2007.


ROBIN J. CAUTHRON
United States District Judge